

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1042

No. 77-1042

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff- Appellee,

-against-

VIRGIL WHITE and ARLETHA FRANKLIN,

Defendant- Appellants.

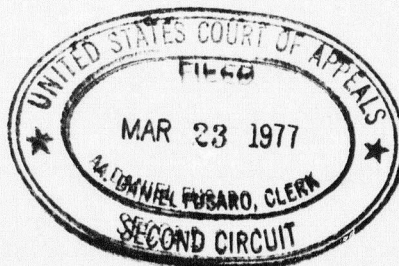
On Appeal From the United States
District Court
For the Southern District of New York

JOINT APPENDIX FOR APPELLANTS VIRGIL WHITE
AND ARLETHA FRANKLIN

JEROME A. LANDAU
Attorney for Virgil White
401 Broadway
New York, N.Y. 10013

MAYROSE FRIEDMAN
Attorney for Arletha Franklin
501 Madison Avenue
New York, N.Y. 10022

LEONARD J. LEVENSON, ESQ.
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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Docket Entry

CRIMINAL DOCKET - U.S. District Court

SENSE PO ☐ JUDGE ☒ Assigned U.S.
SENSE MO ☐ 0861 vs.
ANOR Mis ☐ Disp./Sentence
CLONY Fel ☒ 0208 1 District Office

FRANKLIN, ARLETHA

(LAST, FIRST, MIDDLE)

Case Filed
Mo. Day
03 19
No. of Dets
* 09

76 0274 03

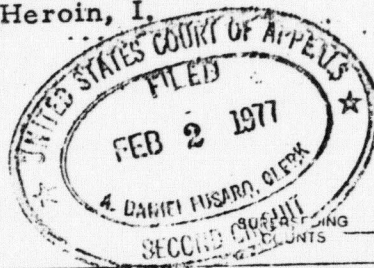
U.S. MAG
CASE NO.

U.S. TITLE/SECTION
21:846
21:812, 841

OFFENSES CHARGED
Con sp. to viol. Fed. Narco. Laws.
Distr. & possess. of Heroin, I.

ORIGINAL COUNTS

1
3, 7



BAIL - RELEASE

☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☐ Pers. Recog
☐ FSA - 1
\$ 000 conditions
Date ☐ 10% Deposit
☐ Surety Bond
☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd ☐ Other

II. KEY DATES & INTERVALS

ARREST of
U.S. Custody Began
3-19-76
Summons Served
First Appearance

INDICTMENT ☒
High Risk Date
Information
3-19-76
Indict Waived
In Charging District

ARRAIGNMENT
6-24-76
First Plea
6-24-76
Final Plea

TRIAL
Trial Set For
11-1-76
Trial Began
11-10-76
Trial Ended
11-30-76

SENTENCE

Disposition of Charges
11-30-76 1-13-77
☒ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed ☐ WOP: ☐ WP
☐ On Government's Motion

MAGISTRATE

| | | | | | | |
|------------------------|--------|------|-------------|---|-------------|---|
| Search Warrant | Issued | DATE | INITIAL/NO. | INITIAL APPEARANCE DATE | INITIAL/NO. | OUTCOME: |
| Summons | Issued | | | PRELIMINARY EXAMINATION OR REMOVAL HEARING | | <input type="checkbox"/> DISMISSED <input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT <input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW |
| Arrest Warrant Issued | Served | | | WAIVED <input type="checkbox"/> NOT WAIVED <input type="checkbox"/> | Tape Number | |
| COMPLAINT | | | | INTERVENING INDICTMENT <input type="checkbox"/> | | |
| OFFENSE (In Complaint) | | | | | | |

U.S. Attorney or Asst.

Frederick T. Davis
791-1933 1944

ATTORNEYS

Mayrose Friedman
501 Madison Ave. NYC 10022
688-7750

* Show last names and serial numbers of other defendants on same indictment/information

Anderson, et al.

| DATE | (DOCUMENT NO.) | PROCEEDINGS |
|----------|----------------|--|
| 3-19-76 | | Filed indictment and ordered sealed. B/W ordered. |
| 6-17-76 | | Indictment ordered unsealed. |
| 6-17-76 | | B/W issued. |
| 6-24-76 | | Not guilty plea directed by the Court. Case assigned to Judge Conner. |
| 7-14-76 | | Filed writ of H/C ad Pros. with marshals return. |
| 6-24-76 | | Filed affdvt. of Frederick T. Davis, AUSA, in support for writ of H/C ad pros.. Ret. 1-1-76 |
| 9-23-76 | | No atty. present.. Deft referred to Magistrate for assignment of counsel. Bail fixed at \$20,000 unsecured P.R.B. a plea of not guilty is directed by Court. Deft advised trial to commence Nov. 1, 1976 before Conner, J. Palmieri, J. |
| 9-27-76 | | Filed Financial Affidavit. |
| 9-27-76 | | Filed CJA Form 20 COPY 5 appointing Mayrose Friedman, 501 Madison Ave. NYC 10022 as atty for deft. Dated 9-23-76, RAEB, U.S. MAG. |
| 10-26-76 | | Filed bill of particulars. |

EXCLUDABLE DELAY

Griesa, J.
Knapp, J.
Knapp, J.

A

| DATE | 76Cr.274 A.FRANKLIN (DOCUMENT NO.) | IV. PROCEEDINGS (continued) | PAGE TWO Conner, J. | V. EXCLUDABLE DELAY | | | |
|----------|---|-----------------------------|------------------------|-------------------------------|-------------------------------|-------------|----------------------|
| | | | | Interval Section II (a) | Start Date End Date (b) | Code (c) | Total Days (d) |
| 11-1-76 | Deft. & atty. present...Application for substitution of atty. will be granted if substitution of atty will not delay trial set for Nov.8-76...Conner, J... | | | | | | |
| 11-10-76 | Atty. present...JURY TRIAL BEGUN... | | | | | | |
| 11-11-76 | Trial cont'd. & adjd to 11-15-76 10 a.m. | | | | | | |
| 11-15-76 | Trial cont'd. | | | | | | |
| 11-16-76 | Trial cont d. | | | | | | |
| 11-17-76 | Trial cont d. | | | | | | |
| 11-18-76 | Trial cont d. | | | | | | |
| 11-22-76 | Trial cont'd. | | | | | | |
| 11-23-76 | Trial cont d. | | | | | | |
| 11-24-76 | Trial cont'd. | | | | | | |
| 11-29-76 | Trial Cont'd. | | | | | | |
| 11-30-76 | Trial Cont'd & Concluded - JURY VERDICT - GUILTY in Counts 1, 3 and 7. P.S.I. Ordered Sentence ADF'D to Jan.13,1977 at 9:30 A.M. BAIL CONT'D.CONNER, J | | | | | | |
| 12-17-76 | Filed transcript of record of proceedings, dated Nov. 9, 10, 11, 15, 16, 1976 | | | | | | |
| 12-17-76 | Filed transcript of record of proceedings, dated Nov. 17, 18, 22, 23, 1976 | | | | | | |
| 12-17-76 | Filed transcript of record of proceedings, dated Nov. 24, 29, 30, 1976 | | | | | | |
| 1-13-77 | <p>Filed Judgment (Atty. Mayrose Friedman, present)</p> <p>Imposition of sentence is suspended on Counts 1, 3 and 7. Defendant is placed on probation for a period of FIVE (5) YEARS, subject to the standing probation order of this Court. SPECIAL CONDITIONS OF PROBATION-Defendant shall not receive in her home any person who is known to be a dealer or user of narcotic drugs. Defendant shall act as a proper mother and as a beneficial influence on her children. CONNER, J</p> <p>Entered on-1-14-77</p> <p>Issued commitment and copies.</p> | | | | | | |
| 1-14-77 | <p>Filed deft's Notice of Appeal to USCA 2nd Circuit from judgment filed 1-13-77.m-copy- Atty for Appellant. Mayrose Friedman, 501 Madison Avenue, NYC 10022 and copy to US Atty.</p> | | | | | | |

| FEE AND COLLECTION PAYMENTS | | | | | |
|-----------------------------|----------------|--------|------|----------------|-------------|
| DATE | RECEIPT NUMBER | AMOUNT | DATE | RECEIPT NUMBER | C.D. NUMBER |
| | | | | | |
| | | | | | |
| | | | | | |

Docket Entry

TY OFFENSE NO. ☐ JUDGE ~~XXXXXX~~ signed U.S.
 OFFENSE MO. ☐ 0861 vs
 DEMEANOR Mis ☐ Disposition
 FELONY ☒ 0208-1 (LAST, FIRST, MIDDLE)

WHITE, VIRGIL

Case Filed
 Mo. Day
 03/19
 No. of Pgs.
 * 09

76 0274 05

U.S. TITLE/SECTION

21:846

21:812, 841

OFFENSES CHARGED

Consp. to viol. Fed. Narco. Laws.
 Distr. & possess. of Heroin I.

ORIGINAL COUNTS

5

FEB 2 1977

RECEIVED

SUPERSEDING

COUNTS

II. KEY DATES & INTERVALS

| ARREST or | INDICTMENT | AFFRAIGNMENT | TRIAL |
|-------------------------------|---|---|------------------------------------|
| U.S. Custody Began 3-19-76 | High Risk Date 3-19-76 | 6-24-76 | Vol. Dire <input type="checkbox"/> |
| Summons Served | Indict. Waived <input type="checkbox"/> | 1st Filing 6-24-76 | Trial Began 11-10-76 |
| First Appearance | In Charging District | Final Plead NO <input type="checkbox"/> G <input type="checkbox"/> NOL | Trial Ended 11-30-76 |

U.S. 1445
 CASE NO.

BAIL - RELEASE

AMT. ☐ \$
 Set ☐ \$
 1000

Disposition of Case

11-30-76 1-13-77

☒ Convicted ☐ J.A. Charge
☐ Acquitted ☐ J.A. Charge
☐ Dismissed ☐ J.A. Charge
☐ On Government's Motion

| MAGISTRATE | | OUTCOME |
|------------------------|--|---|
| Search Warrant | Issued Return Issued Summons Serve 1 | DISMISSED HELD FOR G.U. OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR G.U. OR OTHER PROCEEDING IN DISTRICT |
| Arrest Warrant Issued | COMPLAINT | |
| OFFENSE (in Complaint) | DATE INITIAL/NO. | INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL WAVED <input type="checkbox"/> NOT WAVED <input type="checkbox"/> INTERVENING INDICTMENT |

U.S. Attorney or Asst

ATTORNEYS

Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Set ☐ None / Other ☐ CJA

Frederick T. Davis
 791-1933 -1944

1454

* Show last names and suffixes of other defendants and some identifying information

Anderson, et al

DATE (DOCUMENT NO.) PROCEEDINGS

3-19-76 Filed indictment and ordered sealed. B/W ordered.

6-17-76 Indictment ordered unsealed.

6-17-76 B/W issued.

6-24-76 Not guilty plea directed by the Court. Case assigned to Judge Conner.

7-26-76 Filed Warrant for Arrest, Dated: 3-19-76 with return on: 7-20-76.

8-2-76 Filed papers rec'd. from Magistrate, copy of warrant of removal, waiver of removal form, waiver of 10 day arraignment, order reducing bond.

8-10-76 Filed Magistrate's temporary commitment.

8-11-76 Filed additional Magistrate's papers- financial affdvt. and CJA 20 appointing counsel, Jerome Landau, 401 Broadway-NYC 10013

8-18-76 Deft. not present (Atty. Jerome Allan Landau present).. Bail status \$ 25,000.00 P.R.B. signed by deft. and his wife who resides in Atlanta, Ga. Deft. must report to Pre-trial Services once a week. Deft. REMAINED in Lieu of Bail... CONNER, J.

Griesa, J.
 Knapp, J.

Knapp, J.

4a
Docket Entry

76Cr.274 CONNER, J.

V. WHITE

DOCUMENT NO.

- | Interval | Section | Sub | Code | Total |
|--|---------|-----|------|--------------------|
| (a) | (b) | (c) | (d) | (e) |
| 7-76 | 1 | | | |
| Filed appearance bond in amt. of \$20,000 co-signed by wife dtd. 8-30-76.... | | | | |
| 9-13-76 | 1 | | | |
| Filed remand dated 8-11-76 Aug. 18-76 | | | | |
| 9-10-76 | 1 | | | |
| Filed order that U.S. Marshal return debt to Atlanta Georgia etc. Conner, J. | | | | |
| 09-24-76 | 1 | | | |
| Filed notice of motion for a bill of particulars & to inspect and copy, to dismiss indictment, to suppress etc. Ret. 10-1-76. | | | | |
| 10-6-76 | 1 | | | |
| Filed memorandum of the Govt. in opposition to bill of particulars and pre-trial discovery... | | | | |
| 10-26-76 | 1 | | | |
| Filed bill of particulars. | | | | |
| 10-28-76 | 1 | | | |
| Filed defts request for voir dire of the jury | | | | |
| 11-10-76 | 1 | | | |
| Atty. present... Jury trial begun... | | | | |
| 11-11-76 | 1 | | | |
| Trial cont'd. & adjd to 11-15-76 10 a.m. | | | | |
| 11-15-76 | 1 | | | |
| Trial cont'd... | | | | |
| 11-15-76 | 1 | | | |
| Trial cont'd. | | | | |
| 11-17-76 | 1 | | | |
| Trial cont'd. | | | | |
| 11-18-76 | 1 | | | |
| Trial cont'd. adjd to 11-22-76 10 a.m. | | | | |
| 11-22-76 | 1 | | | |
| Trial cont'd. | | | | |
| 11-23-76 | 1 | | | |
| Trial cont'd. | | | | |
| 11-24-76 | 1 | | | |
| Trial cont'd. | | | | |
| 11-29-76 | 1 | | | |
| Trial Cont'd. | | | | |
| 11-30-76 | 1 | | | |
| Trial Cont'd & Concluded - JURY VERDICT - GUILTY in Count 1 and 5. P.S.I. Ordered Sentence ADJ'D to Jan. 13, 1977 at 9:30 A.M. BAIL CONT'D. DEFT to report to PROBATION DEPT in ATLANTA, GA., every Monday & Friday until sentence day. CONNER, J. | | | | |
| 12-17-76 | 1 | | | |
| Filed transcript of record of proceedings, dated Nov. 9, 10, 11, 15, 16, 1976 | | | | |
| 12-17-76 | 1 | | | |
| Filed transcript of record of proceedings, dated Nov. 17, 18, 22, 23, 1976 | | | | |
| 12-17-76 | 1 | | | |
| Filed transcript of record of proceedings, dated Nov. 24, 29, 30, 1976 | | | | |
| 12-28-76 | 1 | | | |
| Filed Warrant for Arrest with marshals return. | | | | |
| 1-13-77 | 1 | | | |
| Filed Judgment (Atty. Jerome Allan Landau, present) The defendant is committed for imprisonment for a period of TWO (2) YEARS, on Counts 1 and 5, pursuant to Title 18, U.S. Code, Section 3651, on condition that the defendant be confined to a jail type institution for a period of SIX (6) MONTHS. The execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of EIGHTEEN (18) MONTHS, subject to the standing probation order of this Court. Pursuant to the provisions of Title 21, U.S. Code, Section 841, defendant is placed on Special Parole for a term of THREE (3) YEARS. | | | | |
| Defendant Remanded | | | | CONNER, J |
| Issued commitment and copies. | | | | Entered on-1-14-77 |
| mailed copy of judgment-commitment to Atlanta, Georgia. | | | | |

5a

Docket Entry

Cr. 274

.3.

CONNER, J.

DATE

PROCEEDINGS

Virgil White

1-21-77

Filed notice of appeal from judgment dated 1-13-77 copy given to AUSA and mailed to defts atty. J. Landau 401 B'Way NYC...

A TRUE COPY

RAYMOND P. BURCHARDT, Clerk

Deputy Clerk

CRIMINAL DOCKET - U.S. District Court

Docket Entry

TY OFFENSE PO ☐ JUDGE 00000000 assigned U.S. ☐
 JR OFFENSE MO ☐ 0861
 MEANOR ☐ 0208 1
 TELONY Fel ☐ Disp./Sentence

JACKSON, MARX a/k/a "Moxie"

Case No. 03-19
Mo. Cas. No. 09

76 0274 07

U.S. TITLE/SECTION
21:846
21:812, 841

OFFENSES CHARGED
Consp. to viol. Fed. Narco. Laws.
Distr. & possess. of Heroin I.

ORIGINAL COUNTS

U.S. MAG.
CASE NO.

BAIL • RELEASE

AMT _____
Set ☒ 000

☐ Bail Not Made
☐ Status Changed (See Dockets)

☐ Fugitive
☐ Pers. Recog.
☐ PSA

conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Cust
☐ 1st Cust Other

II. KEY DATES & INTERVALS

| ARREST or | INDICTMENT | ARRAIGNMENT | TRIAL |
|--------------------------------------|---|----------------------------|--|
| U.S. Custody Began 3-19-76 | High Risk Date 3-19-76 | 6-24-76 | Trial Set For |
| Summons Served | Indict. Waived | 1st Plea 6-24-76 | <input checked="" type="checkbox"/> NG <input type="checkbox"/> G <input type="checkbox"/> NOL |
| First Appearance | In Charging District | Final Plea | { G Plea W/Drawn |
| | Superseding <input type="checkbox"/> Indict. info <input type="checkbox"/> | | Trial Began 11-10-76 |
| | | | Trial Ended 11-30-76 |

| | |
|---|---|
| Disposition of Charges | SENTENCE |
| 11-30-76 | 1-13-77 |
| <input checked="" type="checkbox"/> Convicted | <input checked="" type="checkbox"/> On All Charges |
| <input type="checkbox"/> Acquitted | <input type="checkbox"/> On Lesser Offense(s) |
| <input type="checkbox"/> Dismissed: | <input type="checkbox"/> WOP: <input type="checkbox"/> WP |
| <input type="checkbox"/> On Governor's Motion | |

| MAGISTRATE | | | | | | | | | |
|--------------------------------------|------|------------|--|--|--|-------------|---|--|--|
| Search Warrant { Issued Return | DATE | INITIAL/NO | INITIAL APPEARANCE DATE | | | INITIAL/NO. | OUTCOME | | |
| | | | PRELIMINARY EXAMINATION OR | | | | <input type="checkbox"/> DISMISSED <input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN <u>THIS DISTRICT</u> | | |
| Summons { Issued Served | | | <input type="checkbox"/> REMOVAL <input type="checkbox"/> HEARING | | | | <input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN <u>DISTRICT E.C.A.</u> | | |
| | | | <input type="checkbox"/> WAIVED <input type="checkbox"/> INTERVENING INDICTMENT | | | | | | |
| Arrest Warrant issued | | | Tape Number | | | | | | |
| COMPLAINT | | | | | | | | | |
| OFFENSE (in Complaint) | | | | | | | | | |

U.S. Attorney, or Ass:

Frederick T. Davis
791-1933

ATTORNEYS Defense: ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other: ☐ PC ☐ CC
John A. Shorter, Jr. Esq.

-1250

* Show last names and suffix numbers of other defendants on same indictment/information.

Anderson, et al.

3-19-76 ✓ Filed indictment and ordered sealed. B/W ordered.
6-17-76 ✓ Indictment ordered unsealed.
6-17-76 - B/W issued.
6-24-76 ✓ Deft. (Atty. John A. Shorter) present. Deft pleads n
set in the amount of \$100,000. P. R. B. (unsecured).
printed and photographed. Case assigned to Judge C

EXCLUDABLE DELAY
Griesa, J.
Knapp, J.

6-24-76 - Filed Appearance Bond in the sum of \$100,000. Dated 6-24-76.

7-6-76 Filed Deft's Notice of Appearance by Atty: John A. Shorter, Jr.
508 5th St.N.W.Washington, D.C.20001 (202)638-4040.

7-6-76 Filed Deft's Motion for an order for production and preparation
of Grand Jury Testimony.

7-6-76:1 Filed Deft's Motion for an order for Bill of particulars.

7-6-76 (A) Filed Deft's Motion for an order for Disclosure of Electronic Surveillance for a hearing and to suppress evidence.

CONTINUED ON PAGE NO. 2.

7a
Docket Entry

M. JACKSON

76 CR 274

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

| IV. PROCEEDINGS (continued) | | PAGE TWO CONNER, J | | V. EXCLUDABLE DELAY | |
|-----------------------------|----------------|---|--|---------------------|-------------|
| DATE | (DOCUMENT NO.) | 76 CR 274 | | Set Date (b) | Cost (c) |
| 7-6-76 | 1 | Filed Deft's Motion for an order for Discovery and inspection and production of evidence favorable to the accused. | | | |
| 7-6-76 | 1 | Filed Deft's Motion for an order under 18 U.S.C. 3504 (a) (1). | | | |
| 10-6-76 | 1 | Filed memorandum of the Govt. in opposition to bill of particulars and pre-trial discovery... | | | |
| 10-20-76 | 1 | Filed writ of H/C ad pros. with marshals return..unexecuted.. | | | |
| 10-26-76 | 1 | Filed bill of particulars | | | |
| 11-10-76 | | Atty. present...Jury trial begun... | | | |
| 11-11-76 | | Trial cont'd. & adjd to 11-15-76 10 a.m. | | | |
| 11-15-76 | | Trial cont'd. | | | |
| 11-22-76 | 1 | Filed petition for writ of H C ad test. for V. McMichaels..... | | | |
| 11-16-76 | | Trial cont'd. | | | |
| 11-17-76 | | Trial cont'd. | | | |
| 11-18-76 | | Trial cont'd. adjd to 11-22-76 10 a.m. | | | |
| 11-22-76 | | Trial cont'd. | | | |
| 11-23-76 | | Trial cont d. | | | |
| 11-24-76 | | Trial cont'd. | | | |
| 11-29-76 | | Trial Cont'd. | | | |
| 11-30-76 | | Trial Cont'd & Concluded. JURY VERDICT - GUILTY in Counts 1 and 6. P.S.I. Ordered Sentence ADJ'D to Jan. 13, 1977, at 9:30 A.M. BAIL CONT'D. DEFT to report to PROBATION DEPT in WASH. D.C. every Monday & Friday until sentence day. CONNER, J | | | |
| 12-17-76 | 1 | Filed transcript of record of proceedings, dated Nov. 9, 10, 11, 15, 16, 1976 | | | |
| 12-17-76 | 1 | Filed transcript of record of proceedings, dated Nov. 17, 18, 22, 23, 1976 | | | |
| 12-17-76 | 1 | Filed transcript of record of proceedings, dated Nov. 24, 29, 30, 1976 | | | |

CONTINUED ON PAGE NO 3.

6

| FINE AND RESTITUTION PAYMENTS | | | | | |
|-------------------------------|----------------|-------------|------|----------------|-------------|
| DATE | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

6 CR 274

Crime

8a

Docket Entry

XXXXDOCKET CONTINUATION SHEET

| | | |
|--------------------|---|---|
| PLAINTIFF U S A | DEFENDANT JACKSON, MARX a/k/a "Moxie" CONNER, J | DOCKET NO. 76-27- 3 PAGE XXXXXXXXXX |
|--------------------|---|---|

| DATE | NR. | PROCEEDINGS |
|---------|-----|--|
| 1-13-77 | — | <p>Filed Judgment (Atty. John A. Shorter, present) The defendant is committed for imprisonment, pursuant to Title 18, U.S. Code, Section 4208(a) (2), for a period of FIVE (5) YEARS, on each of Counts 1 and 6, to run concurrently with each other, and with sentence imposed by United States District Court of the Eastern District of Virginia, for unauthorized possession of a motor vehicle. Defendant is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of his confinement, pursuant to the provisions of Title 21, U.S. Code, Section 841. Defendant shall post a \$25,000 Surety Bond, pending appeal, by 12 P.M. on January 17, 1977. If bail is not posted, defendant shall surrender to the United States Marshal in Room 506 at 12 P.M. on January 17, 1977. CONNER, J</p> <p>Entered on-1-14-77.</p> <p>Issued commitment and copies.</p> |
| 1-13-77 | ✓ | <p>Filed notice of appeal from judgment dtd. 1-13-77 copy given AUSA and mailed to defts counsel.</p> |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :

- v - :

INDICTMENT

RAYMOND ANDERSON, a/k/a "Slim," :

76 Cr.

JOANN JONES, :

ARLETHA FRANKLIN, :

ROBERT MOORE, a/k/a "Bobby," :

VIRGIL WHITE, :

BERNARD JOHNSON, :

MARX JACKSON, a/k/a "Moxie," :

JOE KING and :

EDITH RIVERS, :

Defendants. :

-----x
COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of July, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," JOANN JONES, ARLETHA FRANKLIN, ROBERT MOORE, a/k/a "Bobby," VIRGIL WHITE, BERNARD JOHNSON, MARX JACKSON, a/k/a "Moxie," JOE KING, and EDITH RIVERS, the defendants, together with Earl Rivers and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I

Indictment 76 Cr. 274

and 11 narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

FTD:cc
M-1547

THE DEFENDANTS⁶The Source of Supply in New York

3. Defendant RAYMOND ANDERSON, a/k/a "Slim," was a supplier of heroin doing business in New York City.

The Couriers

4. Earl Rivers and the defendants EDITH RIVERS, JOANN JONES, and ARLETHA FRANKLIN were the couriers who carried packages of heroin from RAYMOND ANDERSON, a/k/a "Slim," to the buyers in other cities in the United States.

The Dealers

5. Defendant ROBERT MOORE, a/k/a "Bobby," was a bulk purchaser of heroin in Williamsport, Pennsylvania.

6. Defendants VIRGIL WHITE and BERNARD JOHNSON were bulk purchasers of heroin in Atlanta, Georgia.

7. Defendants MARX JACKSON, a/k/a "Moxie," and JOE KING were bulk purchasers of heroin in Washington, D.C.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

⁶ The descriptions herein relate to the period of the Indictment.

Indictment 76 Cr. 274

- 1) In 1972, Earl Rivers and the defendant RAYMOND ANDERSON, a/k/a 'Slim,' had a conversation.
- 2) In or about October, 1972, Earl Rivers purchased approximately one quarter kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a "Slim."
- 3) In November, 1973, Earl Rivers and the defendant JOANIS JONES purchased approximately one eighth kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a "Slim."
- 4) In or about November, 1973, Earl Rivers transferred one eighth kilogram of heroin to defendants ARLETHA FRANKLIN and ROBERT MOORE, a/k/a "Bobby."
- 5) In or about December, 1973, the defendants EDITH RIVERS and ARLETHA FRANKLIN travelled to New York City together with Del Zora Graves and purchased approximately one eighth kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a "Slim."
- 6) In or about December, 1973, the defendant RAYMOND ANDERSON, a/k/a 'Slim,' in New York City spoke by telephone with Earl Rivers in Williamsport, Pennsylvania.
- 7) In or about December, 1973, the defendant RAYMOND ANDERSON, a/k/a 'Slim,' distributed approximately one eighth kilogram of heroin to the defendant JOE KING.
- 8) On or about January 17, 1974, Earl Rivers and the defendant RAYMOND ANDERSON, a/k/a "Slim," drove from New York City to Washington, D.C.
- 9) On or about January 18, 1974, Earl Rivers and the defendants MARK JACKSON, a/k/a 'Moxie,' and RAYMOND ANDERSON, a/k/a "Slim," had a conversation.

10) In or about January, 1974, Earl Rivers and the defendant EDITH RIVERS went to Atlanta, Georgia, with a quantity of heroin.

11) In or about January, 1974, the defendants VIRGIL WHITE and BERNARD JOHNSON purchased a quantity of heroin in Atlanta, Georgia.

12) In February, 1974, the defendants VIRGIL WHITE and BERNARD JOHNSON went to Williamsport, Pennsylvania.

13) In February, 1974, the defendants VIRGIL WHITE and BERNARD JOHNSON purchased approximately one eighth kilogram of heroin from the defendant RAYMOND ANDERSON, a/k/a "Slim."

14) In or about February, 1974 the defendant MARX JACKSON, a/k/a "Moxie." purchased approximately one eighth kilogram of heroin and one eighth kilogram of cocaine.

15) In or about March, 1974, RAYMOND ANDERSON, a/k/a "Slim," sold approximately one quarter kilogram of heroin.

16) In or about April, 1974, the defendant RAYMOND ANDERSON, a/k/a "Slim" distributed to the defendant ARLETHA FRANKLIN approximately two and one-half ounces of heroin.

(Title 21, United States Code, Section 846)

PTD:cc
M-1547

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of October, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts One and Three through Seven of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant RAYMOND ANDERSON, a/k/a "Slim," occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant RAYMOND ANDERSON, a/k/a "Slim," obtained substantial income and resources.

(Title 21, United States Code, Section 848).

COUNT THREE

The Grand Jury further charges:

In or about the month of December, 1973, in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," ARLETHA FRANKLIN, and EDITH GRAVES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Section 812
841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

In or about the month of December, 1973, in the Southern District of New York, RAYMOND ANDERSON a/k/a "Slim," and JOE KING, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

The Grand Jury further charges:

In or about the month of February, 1974, in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," VIRGIL WHITE and BERNARD JOHNSON, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

NYD:CO
R-1547COUNT SIX

The Grand Jury further charges:

In or ab ut the month of February, 1974, in the Southern District of New York, RAYMOND ANDERSON and MARX JACKSON, a/k/a "Mexie," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SEVEN

In or about the month of April, 1974 in the Southern District of New York, RAYMOND ANDERSON, a/k/a "Slim," and ARLETHA FRANKLIN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two and one-half ounces of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOREMAN

ROBERT E. FISKE, JR.
United States Attorney

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

| MONTH | DAY | YEAR |
|-------|-----|------|
| 1 | 13 | 1977 |

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Mayrose Friedman, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly combined, conspired, confederated and agreed, together and with each other, to violate Sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Code and unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance. (Title 21, U.S. Code, Section 846.) (Title 21, U.S. Code, Sections 812, 841 (a) (1) and 841 (b) (1) (A).)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Imposition of sentence is suspended on Counts 1, 3 and 7. Defendant is placed on probation for a period of FIVE (5) YEARS, subject to the standing probation order of this Court.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant shall not receive in her home any person who is known to be a dealer or user of narcotic drugs. Defendant shall act as a proper mother and as a beneficial influence on her children.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

JAN 14 1977

SIGNED BY

U.S. District Judge

U.S. Magistrate

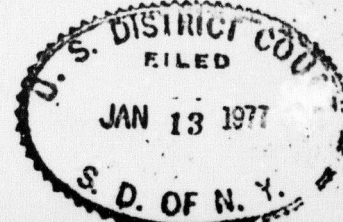
William C. Conner

WILLIAM C. CONNER

Date

1/13/77

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



DEFENDANT

17a
Judgment and Probation Commitment Order

VIRGIL WHITE

DOCKET NO.

76 Cr. 274

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

| MONTH | DAY | YEAR |
|-------|-----|------|
| 1 | 13 | 1977 |

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSELJerome Allan Landau, Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly combined, conspired, confederated and agreed, together and with each other, to violate Sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Code and unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance. (Title 21, U.S. Code, Section 846.) (Title 21, U.S. Code, Sections 812, 841 (a) (1) and 841 (b) (1) (A).)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary, was shown, or appeared, to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TWO (2) YEARS, on Counts 1 and 5, pursuant to Title 18, U.S. Code, Section 3651, on condition that the defendant be confined to a jail type institution for a period of SIX (6) MONTHS. The execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of EIGHTEEN (18) MONTHS, subject to the standing probation order of this Court. Pursuant to the provisions of Title 21, U.S. Code, Section 841, defendant is placed on Special Parole for a term of THREE (3) YEARS.

Defendant Remanded.

SPECIAL
CONDITIONS
OF
PROBATION
ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

MICROFILM

JAN 14 1977

SIGNED

☒ U.S. District Judge☐ U.S. Magistrate

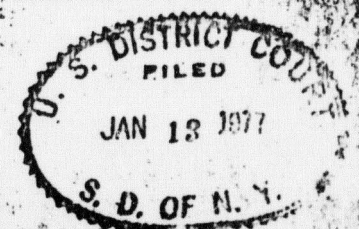
William C. Conner

WILLIAM C. CONNER

Date

1/13/77

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.



Judgment and Probation Commitment Order

MARK JACKSON, a/k/a "Moxie"

DOCKET NO. 76 Cr. 274

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

| MONTH | DAY | YEAR |
|-------|-----|------|
| 1 | 13 | 1977 |

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSELJohn A. Shorter, Esq.
(Name of counsel)☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly combined, conspired, confederated and agreed, together and with each other, to violate Sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Code and unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule 1 narcotic drug controlled substance. (Title 21, U.S. Code, Section 846.) (Title 21, U.S. Code, Sections 812, 841 (a) (1) and 841 (b) (1) (A).)

SENTENCE
ON
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Pursuant to Title 18, U.S. Code, Section 4208(a)(2), FIVE (5) YEARS, on each of Counts 1 and 6, to run concurrently with each other, and with sentence imposed by United States District Court of the Eastern District of Virginia, for unauthorized possession of a motor vehicle. Defendant is placed on Special Parole for a term of THREE (3) YEARS, to commence upon the expiration of his confinement, pursuant to the provisions of Title 21, U.S. Code, Section 841.

SPECIAL
CONDITIONS
OF
PROBATION
ADDITIONAL
CONDITIONS
OF
PROBATION

Defendant shall post a \$25,000 Surety Bond, pending appeal, by 12 P.M. on January 17, 1977. If bail is not posted, defendant shall surrender to the United States Marshal in Room 506 at 12 P.M. on January 17, 1977.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

MICROFILM

JAN 14 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

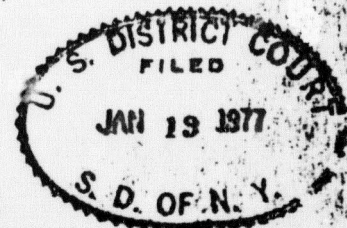
U.S. Magistrate

William C. Conner

WILLIAM C. CONNER

Date

1/13/77



1 jhds 9

2 because he testified falsely in one respect or several
3 respects the rest of his testimony is unworthy of your belief.
4 That is up to you to decide.

5 Now, let's turn to the actual indictment here.
6 I am not going to read the entire indictment. I am merely
7 going to summarize it very briefly, because it is rather
8 long, and the indictment itself will be available for you
9 to consult in the jury room if you so request. Count One
10 of the indictment, which I referred to before as the con-
11 spiracy count, charges that these four named defendants con-
12 spired and agreed with certain other named persons and
13 perhaps others who are unknown to the grand jury to violate
14 certain sections of the United States Code which relate to
15 the distribution of narcotics, including heroin and cocaine,
16 and the possession of such narcotics with the intent to
17 distribute.

18 The particular statutes that are referred to
19 there, and in particular Section 841 of Title 21, make it
20 a crime to distribute or possess with intent to distribute
21 certain narcotic drugs, including heroin and cocaine, and
22 Count One charges that the defendants conspired or agreed
23 together to violate that section by distributing or possessing
24 with intent to distribute heroin and/or cocaine.

25 Now, what is a conspiracy? Conspiracy is

1 jhds 10

2 sometimes called a collective criminal agreement or a
3 partnership in crime. Conspiracy is the association of
4 persons for criminal purposes and, as I will explain further
5 in a moment, the taking of specific action designed to accom-
6 plish those purposes.

7 Such concerted action frequently makes possible
8 the attainment of ends which are more complex than those
9 which an individual acting alone would be able to accomplish.
10 Moreover, such group association increases the likelihood
11 that the object of the conspiracy, the purpose of the con-
12 spiracy, can be successfully realized, and it frequently
13 renders detection more difficult than would be the case where
14 a sole wrongdoer were attempting to accomplish the crime
15 alone. It was perhaps because of these and other reasons
16 that Congress made conspiracy a crime in and of itself, en-
17 tirely separate and distinct from the substantive offense
18 which is the object of the conspiracy.

19 So we have on the one hand in this indictment
20 one count which charges a conspiracy, an agreement to violate
21 the law, and we have four other counts which charge the
22 actual violation. But the conspiracy itself may be a crime
23 in addition to the substantive crime, that is, the actual
24 sale of narcotics or the possession with intent to distribute
25 narcotics.

1 jhds 11

2 Now, in proving a conspiracy the government does
3 not have to prove an actual violation of the substantive
4 law, that is, it does not have to prove actual distribution
5 or possession with intent to distribute. It need only prove
6 the things which I will talk to you about in a moment. In
7 other words, it is not necessary for the conspiracy to
8 achieve its purpose in order for the crime of conspiracy to
9 be completed. But the government in order to make out the
10 crime of conspiracy must prove beyond a reasonable doubt
11 each of the following four things:

12 First, that some time during the period between
13 July 1, 1972 and the date of filing of the indictment, which
14 was March 19, 1976, there was an agreement between two or
15 more of the persons named in the indictment or at least one
16 of those persons and one other unnamed person.

17 Second, that it was an object of this agreement
18 to violate the law by distributing or possessing with an
19 intent to distribute a narcotic drug controlled substance,
20 in this case, either heroin or cocaine.

21 Third, that the defendant that you are con-
22 sidering -- as I have indicated, you must consider each one
23 independently and separately of the others -- that defendant
24 knowingly associated himself with the conspiracy with the
25 intent to further the accomplishment of its illegal purposes.

1 jhds 12

2 And fourth, that at least one of the conspirators
3 committed at least one of the overt acts charged in the
4 indictment at about the time and place alleged.

5 Now, Count One includes on pages 3 and 4 a list
6 of 16 alleged overt acts, and as I will explain to you in a
7 moment, you must find that at least one of the conspirators
8 performed at least one of those overt acts alleged in the
9 in ~~1948~~ at at or about the time and place alleged with the
10 intent of furthering the purposes of the conspiracy.

B3

11 Now let's look at those four elements separately.
12 The first element, you may recall, was the existence of the
13 conspiracy or agreement. To show that a conspiracy existed
14 the government is not required to show that two or more
15 persons sat around a table and entered into a formal agree-
16 ment, orally or in writing, stating that they have formed
17 a conspiracy to violate the law or setting forth in detail
18 the plans by which the unlawful project was to be carried out
19 or the part to be played by each conspirator. Indeed, since
20 the very nature of a criminal conspiracy is secrecy, it
21 would be extraordinary if you could find that there were
22 such a formal agreement, oral or written, with respect to the
23 formation of the conspiracy.

24 Your common sense will tell you that when
25 persons undertake to enter into a criminal conspiracy they

1 jhds 13

2 naturally leave much to unexpressed understanding. They
3 don't reduce their agreements to writing or sign them be-
4 fore a Notary Public, nor do they publicly broadcast their
5 plans.

6 From its very nature, a conspiracy to violate
7 the law is characterized by secrecy and much is left to
8 implication and understanding. By the same token, express
9 language or specific words are not required to indicate the
10 assent or association with the conspiracy of a particular
11 defendant.

12 In determining whether there has been an illegal
13 agreement, therefore, you must consider all of the evidence,
14 including the circumstantial evidence, as I will explain it
15 to you in a moment. You will judge the acts and the state-
16 ments of the alleged co-conspirators to determine what they
17 understood and what their intentions were. The old adage
18 actions speak louder than words is applicable in a situation
19 such as this.

20 As I told you before, it is not necessary for
21 the government to prove that the conspiracy succeeded. How-
22 ever, that is not to say that evidence of the success of
23 the venture is not evidence of the existence of the conspiracy.
24 It may well be. In fact, it may be the best evidence of what
25 people intended. In other words, it may be very good proof

1 jhds 14

2 of the existence of the conspiracy. How good will be up to
3 you to determine.

4 It is likewise not necessary for the government
5 it prove that each member of the conspiracy dealt with or
6 even knew all of the other members of the conspiracy. It
7 is sufficient if the conspirator is associated with only a
8 single other conspirator, if it is shown that the conspirator
9 in question was aware of the basic scope and purpose of the
10 conspiracy.

11 Now, as I have indicated to you, you will have
12 to make this determination with respect to each of the four
13 defendants on trial here and you must determine each of these
14 elements with respect to that defendant and conclude whether
15 the government has proven the existence of that element
16 beyond a reasonable doubt as to the particular defendant
17 you are considering.

18 Now let's turn to the second element, and that
19 is the unlawful purpose of the conspiracy. The indictment
20 here charges that the unlawful purpose of the conspiracy
21 was to distribute or possess with intent to distribute heroin
22 or cocaine.

23 As to the precise meaning of distribution or
24 possession with intent to distribute, I will instruct you
25 about a little later on in the charge. As I have already

1 jhds 14A

2 indicated to you, the law does forbide the distribution of
3 heroin or cocaine or the possession of those substances with
4 the intent to distribute them. If a person distributes
5 heroin or cocaine or possess them with the intent to
6 distribute them or enters a conspiracy that has such distribu-
7 tion or possession as its purpose knowing of that purpose,
8 then it is not necessary for that person to be shown to know
9 what particular law he or she is violating or even that they
10 aer violating the law at all, as long as they are aware of
11 the general illicit or improper nature of their activities.

12 Now let's turn to the third element, and that
13 is that the particular defendant that you are considering
14 knowingly associated himself or herself with the conspiracy.
15 After you have found that a conspiracy existed, if you have,
16 and after you have found that the conspiracy had an illegal
17 purpose, if you have, then you must determine whether the
18 government has established beyond a reasonable doubt that
19 the particular defendant you are considering participated
20 in the conspiracy or associated himself or herself with it
21 with knowledge of its illegal purposes and with the intention
22 of furthering those purposes or assisting in the accomplish-
23 ment of those purposes.

24 In determining whether a defendant became a
25 member of the conspiracy you must determine whether he

1 jhds 15

2 knowingly participated in it and whether he knew of its
3 illegal purposes or improper purposes and whether he intended
4 by his actions to assist in the accomplishment of those
5 purposes.

6 Now, those matters of knowledge and intent are
7 matters which, as you will understand, are rarely susceptible
8 of direct proof. We can't look into a person's mind to find
9 out what he or she is really thinking or what their intentions
10 are or what they know. We often have to determine knowledge
11 and intent by inference from the facts which are proved,
12 from their actions and from their statements.

13 Now, I want to caution you that mere association
14 with members of the conspiracy, for example, visitng them
15 or traveling with them, even over long distances, does not
16 without more make one a member of the conspiracy. Nor is
17 knowledge of a criminal conspiracy or even observation of
18 some of its activities sufficient without actual participa-
19 tion of the defendant in question.

20 What is necessary is that the defendant in
21 question participate in the conspiracy actively with knowledge
22 of at least some of its illicit purposes and with the inten-
23 tion to aid in the accomplishment of those purposes.

24 Now, as I have already indicated to you, it's
25 not necessary that a particular defendant be associated with

1 jhds 16

2 more than one member of the conspiracy or even know more
3 than one other member of the conspiracy. It is only neces-
4 sary that he have some idea of the scope and nature of the
5 conspiracy and of its illicit purposes and that he voluntarily
6 associate himself with it and intentionally participate in
7 some way in order to further those illegal purposes.

8 Now, it is not necessary for you to find that
9 the defendant performed more than one act to further the
10 illegal purposes of the conspiracy. If you find that he
11 knowingly associated himself with it with the intent to
12 further its illegal aim, then he becomes responsible for
13 everything that the conspiracy did before he became a member
14 and while he was a member.

15 Once you are satisfied beyond a reasonable doubt
16 that a conspiracy existed and that a particular defendant
17 associated himself with it in the manner I indicated, then
18 the acts and declarations of all of the other members of
19 the conspiracy become his or her acts and declarations as
20 well, because they are, as I indicated before, partners in
21 crime. This is true even though the particular defendant in
22 question was not present during the making of the statements
23 or the performance of the acts in question and even though
24 the person didn't know in advance that those statements
25 were going to be made or those acts were going to be

1 jhds 17

2 performed, provided these were things that might reasonably
3 have been anticipated from the nature of the conspiracy with
4 which the person knowingly and intentionally associated
5 himself or herself.

B4

6 Now, the fourth and final element, assuming
7 you have found that the government has established the other
8 three beyond a reasonable doubt, is that the government must
9 also establish beyond a reasonable doubt that at least one
10 of the conspirators performed at least one of the overt
11 acts alleged in Count One of the indictment.

12 An overt act is any step or action or conduct
13 which is taken to achieve or further the objectives of the
14 conspiracy. The purpose of requiring proof of an overt act
15 is that while parties might conspire and agree to violate the
16 law, they might change their minds and do nothing, in which
17 case their agreement would not constitute an offense. The
18 overt act, however, need not be the accomplishment of the
19 crime which was the ultimate purpose of the conspiracy.
20 It can be any act which is taken to further the purposes of
21 the conspiracy.

22 As I have indicated, the conspiracy does not
23 have to succeed, and likewise, the overt act which is
24 established need not be the ultimate consummation of the
25 purposes of the conspiracy, so long as it promotes or aids

1 jhds 18

2 or assists in accomplishing those purposes.

3 It is not necessary for the government to prove
4 that the particular defendant you are considering committed
5 or even participated in the particular overt act you find,
6 because, as I explained a minute ago, once you find the
7 existence of conspiracy and once you find that a particular
8 defendant knowingly associated himself or herself with the
9 conspiracy with the intent to further its illegal ends, then
10 the acts of the other conspirators become, in effect, his or hers
11 acts, the acts of each member become the acts of all the other
12 members, provided they are performed in reasonable further-
13 ance of the objectives of the conspiracy.

14 Now, the government is not required to prove
15 all 16 of the overt acts alleged in Count One. It will
16 suffice if they establish beyond a reasonable doubt that at
17 least one of those 16 overt acts was committed in the
18 Southern District of New York, which includes Manhattan and
19 the Bronx, at or about the time alleged. Of course, you
20 must further be satisfied that that overt act was performed
21 with the purpose of furthering the objective of the con-
22 spiracy.

23 Now, the indictment charges that the conspiracy
24 existed during the period from July 1, 1972 to March 19, 1976,
25 or on or about that period I think is the language of the

1 jhds 19

2 indictment. It is not essential that the government prove
3 that the conspiracy started and ended on those specific
4 dates. It is sufficient that you find that in fact a
5 conspiracy was formed and existed for some time within that
6 period, that is, July 1972 to March 1976.

7 The guilt of a conspirator is not determined
8 by the length of time he or she was a member of the con-
9 spiracy or by the size of the role he or she played in the
10 overall objective of the conspiracy. A person need not be
11 a member of the conspiracy from its inception. He may join
12 at any point during its progress and still be held responsible
13 for all that had been done before he joined and all that may
14 be done thereafter while he remains a member. In other
15 words, once he becomes a member the acts of the other co-
16 conspirators, whether performed before he became a member or
17 during his membership, become, in effect, his acts.

18 Now, so much for Count One, the conspiracy count.
19 Let's turn to the substantive counts.

20 Originally there were six substantive counts.
21 Two have been omitted. The only reason I mention this is
22 because I will skip to Count Three, Count Two having been
23 omitted. You need not speculate as to why these other
24 counts were dropped. You need only consider the counts which
25 remain.

1 mmds 12

2 Judge Frankel's courtroom?

3 THE COURT: As long as you can be here in ten
4 minutes.

5 MR. LANDAU: I will supply you with all the in-
6 formation necessary to reach me.

7 THE COURT: You will be here in the courthouse?

8 MR. LANDAU: Yes, with Judge Frankel.

9 MR. SHORTER: If they ask for exhibits --

10 THE COURT: Can we agree if they ask for any
11 of the exhibits I need not come down, that you can agree
12 amongst yourselves?

13 MR. LANDAU: Yes.

14 (In open court - jury present)

15 THE COURT: I am going to be very brief, but
16 there are a few items with respect to which I should supple-
17 ment the charge.

18 Number one, I think at one point in my charge
19 I said that there were perhaps some defendants as to which
20 there was evidence of a prior conviction. I should be a
21 little more specific so that you are not misled -- Marx
22 Jackson is the only defendant of the four as to which there
23 was some evidence or any evidence of a prior conviction.

24 Second, at some time during the trial I told
25 you there was certain evidence which might be removed from

1 mmds 13

2 your consideration. I think I told you at the time that
3 unless I indicated otherwise, you would consider all of the
4 evidence and none of it would be excluded, except as I
5 specifically told you. I want to clarify that now:

6 All of the evidence should be considered by
7 you; none of it has been excluded, except as to those
8 occasional items where I specifically told you you should dis-
9 regard that statement or that answer or that question. But
10 all of the evidence that was adduced from the witness on
11 the stand as to which there was an objection, where I told
12 you I would take that matter under consideration, that evi-
13 dence has all been received and should be considered by
14 you.

15 Third, I think I said that there were two
16 defendants who were accomplices, that is, two witnesses who
17 were named as defendants and who had participated themselves
18 in the offenses charged. There was also one other government
19 witness, who although not named as a defendant, was an
20 accomplice or participant, and that was Earl Rivers. He
21 is not named as a defendant, but he was admittedly a very
22 substantial participant in the conspiracy. He was not named
23 in any of the substantive counts or in the conspiracy count,
24 either, though he was an accomplice in the conspiracy.

25 Fourth, at one point in my charge I said that

1 mmds 14

2 in order to make out a case against a defendant on the charge
3 of conspiracy, the government must establish beyond a reason-
4 able doubt that ~~that~~ particular defendant associated himself
5 with the conspiracy, with at least some knowledge of its
6 scope. Now, I think I should explain what I meant by that,
7 because I think that is a little vague.

8 It is not necessary that a defendant know pre-
9 cisely the breadth of a conspiracy or all of its activities;
10 it is only necessary to know that there is more to the
11 conspiracy than just the particular act that he is involved
12 in; he has got to know that there are others who are part
13 of this partnership or team which is designed to accomplish
14 illegal purposes. He does not have to know how many con-
15 spirators are involved, he does not have to know the extent
16 of their activities, or even the nature of all their
17 activities; he just has to know there is more to the
18 conspiracy than the isolated acts he is involved in; he has
19 to know that he is a member of a team; he does not have to
20 know everything that the team does, or even the scope, pre-
21 cise scope of its activities, or even the approximate scope
22 of its activities.

23 Fifth, at one point I think I said that there
24 was or might be an inconsistency between the testimony of
25 Joann Jones here in this courtroom and the out-of-court

1 mmds 15

2 statements which she gave to the DEA agents and her testi-
3 mony before the grand jury. The defendant Joann Jones con-
4 tends there is little or no inconsistency between her court
5 testimony and those out-of-court statements. It will be
6 up to you to determine the extent to which there are incon-
7 sistencies, and if they are, whether he in-court testimony
8 or her out-of-court statements should be believed by you.

9 I think that covers all of the points.

10 It is 7:30 now, a little after, and I think
11 that considering the weather, which is very inclement, it
12 would be better for you to go now and begin your deliberations
13 in the morning at 9:30, unless an overwhelming number of you
14 tell me you would prefer to start tonight.

15 JUROR NO.5: I prefer to start tonight.

16 THE COURT: Well, since there is no overwhelming
17 show of sentiment, we will excuse you. In that way, we
18 can hold on to our alternate jurors, so that if one of you
19 falls by the way between now and tomorrow morning, we will
20 still have a full jury to deliberate. So you are excused
21 now until 9:30 in the morning.

22 I am going to caution you again -- don't dis-
23 cuss the case in the meantime with your fellow jurors or
24 with anyone else. The reason for that is that the delibera-
25 tions of the jury should be the deliberations of all twelve

1 mm/s 4

2 next step that I have not taken.

3 MR. SHORTER: The other thing that I would like
4 to comment about is you had promised to refer to the
5 accomplices as alleged accomplices, and you should by name
6 include Earl Launey Rivers or Launey Earl Rivers. You men-
7 tioned his wife and you mentioned Bobby Moore.

8 THE COURT: I mentioned them because he is not
9 named as a defendant; his is named as an unindicted co-con-
10 spirator. They must know that Launey Earl Rivers is an
11 accomplice. In fact, he was the kingpin in the conspiracy.

12 MR. SHORTER: Those are the only comments that
13 I would have.

14 THE COURT: Anyone else?

15 MR. CURLEY: Your Honor, I understood you to
16 say as to the elements of a conspiracy that the defendants
17 must have some idea of the scope of the conspiracy, and I
18 am not sure what that means, your Honor. It seems to me the
19 government must prove that the defendant charged in a con-
20 spiracy count must have full knowledge of the conspiracy
21 charged in the indictment.

22 THE COURT: But he doesn't have to have full
23 knowledge of its scope; he has to have knowledge of its
24 illegal purposes, but he does not have to know whether one
25 kilogram or ten kilograms of heroin are being distributed;

1 mmds 5

2 he doesn't have to know whether two retailers or ten are in-
3 volved.

4 MR. CURLEY: I would agree on a particular
5 hypothetical situation, but when we are talking about a par-
6 ticular case on trial, the government must prove that the
7 defendants have some knowledge of the exact conspiracy charged
8 in the trial, and here we have aspects of even going to
9 Florida, which is not specifically mentioned in the indict-
10 ment.

11 THE COURT: Well, the conspiracy charge is not
12 all that specific; it is merely a conspiracy to distribute
13 or possess with intent to distribute heroin, without speci-
14 fying any specific scope at all. I used that language in
15 the proposed charge of the government; the language was
16 "aware of the basic scope and purpose of the conspiracy."
17 I think the scope there was used not in the technical sense,
18 so maybe I actually was unfair to the government when I
19 said some knowledge of the scope of the conspiracy.

20 MR. CURLEY: It seems to me that the charge
21 of conspiracy in this indictment is the transfer of narcotics
22 from New York to Williamsport, and to the District of Columbia,
23 and Atlanta. There is no testimony involving my client with
24 any knowledge of any of the goals where the narcotics was
25 going. I would like the government to prove just what was

1 mmds 6

2 happening with the narcotics, rather than have the jury
3 speculate that she may have had some knowledge of these
4 other cities, because there is no knowledge that she had
5 such other knowledge.

6 THE COURT: I don't understand your point. What
7 would you like me to tell the jury?

8 MR. CURLEY: That government must prove that a
9 conspirator knew the goals of the conspiracy charged in the
10 indictment, rather than to have some idea of the scope of
11 the conspiracy.

B2

12 THE COURT: But the charge in the indictment
13 is described in the broadest possible terms. It could in-
14 volve one retailer; it could involve a thousand; it could
15 involve one city; it could involve the entire country; it
16 could involve a single glassine bag of heroin; it could in-
17 volve a pound of heroin -- I don't know what you want me to
18 tell them, really.

19 MR. CURLEY: I would like them to be instructed
20 to determine whether my client knew what the goals of the
21 conspiracy were.

22 THE COURT: I don't know what you mean by goals.
23 If the goal is to possess with intent to distribute or to
24 ditribute heroin, that is the only goal that is referred to
25 in the indictment. I have already charged them on that.

1 mmds 7

2 In terms of goals, if you are talking about three cities
3 and three-eighths of a kilogram or more of heroin, I don't
4 have to charge them that, because that won't be right. A
5 co-conspirator does not have to know how many cities are in-
6 volved or how many pounds are involved.

7 MR. CURLEY: I can't disagree with that proposi-
8 tion of law. In this case it seems to me the government is
9 interpreting the single multiple conspiracy problem by charg-
10 ing, as you noted, as broad a conspiracy as possible, and
11 then we have that coupled with the Court's charge that all
12 a conspirator has to have is some idea of the scope of the
13 conspiracy, and that makes it very broad.

14 THE COURT: I think you've got a point there,
15 because we did have a motion to sever, and I think the
16 charge might be deficient in the respect that I think in
17 order to prove the conspiracy charged, that is, the conspiracy
18 which brought about a consolidated trial for these four
19 defendants, they have to know that somebody other than they
20 and the one person they dealt with are involved; they have
21 to have some idea that this is a conspiracy of some scope,
22 involving not just their transaction, but something of a
23 broader scope. I am willing to tell them that.

24 MR. CURLEY: I would request that.

25 THE COURT: I think with respect to Joann Jones

1 mnds 8

2 it might be appropriate.

3 MR. DAVIS: I ask that it be balanced, on the
4 other hand, they don't have to know the names and identities
5 of the others.

6 MR. CURLEY: I have one final point in reading
7 my notes; it concerns the various statements that my client
8 made to the agents, to the grand jury and on her trial testi-
9 mony, and my problem, your Honor, is that I understood the
10 Court to suggest that if the statements were inconsistent,
11 the jury would have to pick between the two. I think,
12 similar to the word "participation," which the government
13 has perhaps quite cleverly used throughout its summation,
14 the statements are partially inconsistent, but not totally
15 inconsistent, and I would not want the jury to be instructed
16 that if they find some inconsistency, they must totally accept
17 or reject the statements to the agents, the statements to
18 the grand jury and her trial testimony, because, basically,
19 as your Honor has noted when I mentioned our theory of the
20 case, her statements are not that inconsistent; she has not
21 denied certain knowledge, a certain presence, certain objects,
22 and all of these have been covered in the three areas -- the
23 statements, the grand jury and the trial testimony.

24 So, I would ask they consider them in their
25 entirety to see whether any inconsistencies amount to an

1 mmds 9

2 admission.

3 THE COURT: I will do that.

4 Now, do you want something?

5 MR. DAVIS: I am not sure I understand that.

6 THE COURT: Yes, I did say that there was an
7 inconsistency or suggest that there was an inconsistency be-
8 tween the testimony of Joann Jones and her out-of-court
9 statements and grand jury testimony, and they would have to
10 determine which to believe. It is Mr. Curley's theory that
11 there is not so much inconsistency as appears, and he does
12 not want me to suggest that the statements are inconsistent,
13 but leave it up to the jury if they are inconsistent.

14 MR. DAVIS: As long as it is up to them to
15 determine.

16 THE COURT: Yes.

17 MR. LANDAU: Your Honor, there have been cases
18 where juries have been charged with reference to single
19 isolated acts that don't necessarily place a defendant with-
20 in the realm of a conspiracy. I don't have any citations
21 with me. I remember a charge recently about a single iso-
22 lated act, in other words, where the person is not part of
23 a conspiracy, and I won't reiterate what Mr. Curley pointed
24 out, but suppose a person makes a purchase from someone
25 else of some heroin and they have the requisite intent to

1 mmds 10

2 sell it, which might tie him in with the substantive count,
3 but does not make him a part of the conspiracy, and I think
4 this might be the case here.

5 THE COURT: Well, I have said the act as proven
6 has to be calculated to advance the purposes of the con-
7 spiracy. I think that is already covered. I understand
8 your point.

9 MR. LANDAU: If we are to assume the government's
10 contention, it would seem to me that a little bit more
11 explicit charge with reference to a defendant's knowledge
12 of the conspiracy should be given. I am covering a little
13 bit of what Mr. Curley has said, but what I am tying into
14 it now with reference to those charges, the Courts have
15 mentioned isolated acts of buying, for instance, a person
16 going up to somebody, buying some heroin from them, the per-
17 son that they buy from can be part of a big conspiracy.

18 THE COURT: I will cover that when I cover his
19 point about some knowledge.

20 Anything else?

21 MR. DAVIS: I would submit the more difficult
22 problem, what do we do in terms of time?

23 THE COURT: I think because of the hour, I will
24 let them go right home. In that way we can hold on to our
25 alternates, and in case anybody cannot get in because of

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